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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,401	03/09/2004	Marc Radow	501120-014	5592

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Marc Radow
1900 Joy Lake Road
Reno, NV 89511

EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/797,401	Applicant(s) RADOW, MARC	
	Examiner Harry A. Grosso	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-28 is/are pending in the application.
- 4a) Of the above claim(s) 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/21/07</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Newly submitted claims 24-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the original claims are to a receptacle. Claims 24-28 are to a combination of a receptacle and an edible substance or food substance.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 24-28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 21 recites the limitation that "the upper position is greater than or equal to about one-half inch and less than two inches". This

Art Unit: 3781

limitation is not described in or supported by the original disclosure. This is a new matter rejection.

Claims 22 and 23 are dependent on claim 21.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites the limitation that "the upper position is greater than or equal to about one-half inch and less than two inches". This limitation is not described in or supported by the original disclosure. This is considered new matter.

Claims 22 and 23 are dependent on claim 21.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-8, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Phalin (4,405,058).

3. Regarding claims 1 and 7, Phalin discloses a receptacle with a recessed portion (54, Figure 4, column 7, line 54 to column 8, line 9), raised portion (55) and a vertical outer wall (52). Phalin further discloses that the receptacle can have a diameter greater

Art Unit: 3781

than its height (column 1, lines 50-56). If the diameter is greater than the height, the maximum opening dimension (diameter) will be greater than the second distance.

4. Regarding claims 2 and 3, the raised portion is a closed continuous surface that is a dome.

5. Regarding claim 6, the recessed area has a flat surface (54, Figure 4).

6. Regarding claims 8 and 13, the receptacle is a drawn and ironed container of uniform diameter and, as such, the recessed portion, the raised portion and the outer wall portion would all extend substantially in a circle (column 9, lines 11-15).

7. Regarding claim 10, the outer wall portion extends upwardly a second distance at least twice the first distance that the raised portion extends upwardly.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4, 5, 11, 12 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phalin.

10. Regarding claims 4 and 5, Phalin discloses the claimed invention except for the distance from the recessed portion to the top-most portion of the raised portion being three quarter inch, which is greater than approximately 1/2 inch. It would have been an obvious matter of design choice to have made the distance from the recessed portion to the top-most portion of the raised portion three quarter inch, since such a modification

Art Unit: 3781

would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

11. Regarding claims 11 and 12, Phalin discloses the claimed invention except for the second distance being approximately twice the first distance or two inches. It would have been an obvious matter of design choice to have made the second distance either approximately twice the first distance or two inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

12. Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phalin in view of Sugiyama et al (JP 03243231 A, October 30, 1991).

13. Regarding claim 14, Phalin discloses a receptacle with a closed body (Figure 4) having an upper rim (51), a vertical outer wall portion (52), a base portion with an upward facing flat surface (54) and a raised portion (55). Phalin does not teach that the raised portion has a vertical height approximately half the first distance. Sugiyama et al discloses a similar receptacle with a raised portion that has a vertical height approximately half the first distance (Figures 1 and 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a raised portion that has a vertical height approximately half the first distance as disclosed by Sugiyama et al in the receptacle disclosed by Phalin since this capability is known in the art and to provide increased strength.

Art Unit: 3781

14. Regarding claim 15, Phalin discloses the raised portion is convex.

15. Regarding claims 16 and 18, the raised portion peaks below the upper rim and the outer wall portion extends above the raised portion (Figure 4).

16. Regarding claim 17, Phalin discloses substantially vertical outer walls.

17. Claims 19 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Biggins (4,042,143) in view of Phalin and Sugiyama et al.

18. Regarding claim 19, Biggins discloses a round container (Figures 1-2) with an upper rim (6), a vertical outer wall portion (3), a base portion with a flat surface facing upwardly (15), a raised portion extending inwardly from the base portion (14), and a round rimming dish (8) having a recessed area and a raised area of a size to allow manual grasping of the raised area.

19. Biggins does not teach that the raised portion of the container extends substantially constantly upwardly toward a center of the receptacle. Phalin discloses a similar container and a convex raised portion extending inwardly from the base portion and substantially constantly upwardly toward a center of the receptacle (Figure 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a convex raised portion extending substantially constantly upwardly toward a center of the receptacle as disclosed by Phalin in the receptacle disclosed by Biggins since it is known in the art that a raised portion of this configuration will provide increased strength against internal force pressing down on the raised portion.

Art Unit: 3781

20. Biggins and Phalin do not teach that the raised portion has a vertical height approximately half the first distance. Sugiyama et al discloses a similar receptacle with a raised portion that has a vertical height approximately half the first distance (Figures 1 and 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a raised portion that has a vertical height approximately half the first distance as disclosed by Sugiyama et al in the receptacle disclosed by Biggins as modified by Phalin since this capability is known in the art and to provide increased strength.

21. Regarding claim 20, Biggins discloses a lid sized to fit over the container rim (7).

22. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phalin.

23. Regarding claims 21 and 22, Phalin discloses a receptacle with a closed body (Figure 4) having an upper rim (51), a vertical outer wall portion (52), a bottom portion with a bottom wall having a flat surface (54) and a raised portion (55) extending to an upper position below the rim. Phalin does not disclose the upper position is about one-half inch or less than two inches. It would have been an obvious matter of design choice to have the upper position be about one-half inch or less than two inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

24. Regarding claim 23, Phalin discloses the raised portion has a curvature over substantially the entire surface.

Response to Arguments

25. Applicant's arguments filed February 21, 2007 have been fully considered but they are not persuasive. Applicant argues that the cited prior art does not teach or suggest the limitations recited in the claims as amended in the amendment filed February 21, 2007. In response, the amended claims have been addressed in the above action.

26. Applicant argues that the purpose of Phalin is different than the purpose of the instant application. In response, Phalin produces a receptacle that meets the structural limitations of the claims as discussed in the above action.

27. In response to applicant's argument that the receptacle of Phalin is not believed to have sufficient diameter to receive drink ware, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Additionally, Phalin discloses a variety of diameters and some items of drink ware would be capable of being received in the receptacles defined by Phalin.

28. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Art Unit: 3781

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Phalin and Biggins both disclose one piece containers. Phalin is used to teach a bottom profile and the bottom profile of Phalin would be knowledge generally available to one of ordinary skill in the art.

29. Applicant argues the applicability of the Lancette, Franco and Propp references cited by applicant. The examiner has not cited any of these references in actions relating to the instant application.

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

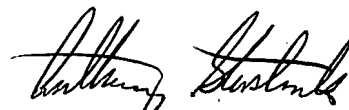
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-

Art Unit: 3781

4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony Stashick
Supervisory Patent Examiner
Art Unit 3781

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